

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





*Original with affidavit  
of mailing*

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Page*

**75-1007**

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 75-1007**

UNITED STATES OF AMERICA,

—against—

*Appellee,*

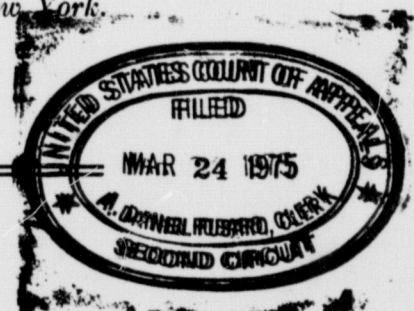
PATRICK J. Mc DONOUGH,

*Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**GOVERNMENT'S APPENDIX**

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York.*



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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 - against -

73 CR 954

7 PATRICK J. McDONOUGH,

8 Defendant.

9 -----X

10  
11 United States Courthouse  
12 Brooklyn, New York

13 November 22, 1974  
14 2:00 P.M.

15 B e f o r e :

16 HON. EDWARD R. NEAHER, U. S. D. J.  
17  
18  
19  
20

21 ( EVIDENTIARY HEARING )  
22  
23

24 ILENE GINSBERG  
25 ACTING OFFICIAL COURT REPORTER



1  
2     **A P P E A R A N C E S :**  
3  
4

5                     **DAVID G. TRAGER, U.S. ATTORNEY**

6             **BY:    E. LEVIN-EPSTEIN, AUSA**

7                     **PHYLLIS SKLOOT BAMBERGER, ESQ.**  
8             **Attorney for defendant**  
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1  
2 THE CLERK: U.S.A. v. Patrick J. McDonough,  
3 criminal cause, evidentiary hearing.

4 MR. LEVIN-EPSTEIN: Your Honor, the  
5 Government's position with respect to this  
6 hearing will be that under the rules for the  
7 prompt disposition of cases under Rule 50b,  
8 the Government was entitled to a number of  
9 excludable periods under Rule 5 of those  
10 prompt disposition rules.

11 Specifically, the Government feels it  
12 was entitled to two excludable periods; one,  
13 exceptional circumstances under Valot and under  
14 the Rule 5 exception saying the period will not  
15 run during a period of time when the location  
16 of the defendant or his presence is unknown  
17 to the United States and we contend and will  
18 show that during the period of time from the  
19 date of his arrest, May 14, 1973 until approx-  
20 imately three or four weeks after that, the  
21 defendant informed Special Agent Caputo that  
22 he wished to cooperate and that should be  
23 excluded, certainly, in access of the five days  
24 in issue and furthermore, during the time between  
25



1  
2 October 31 and November 14 when Mr. McDonough  
3 finally appeared in court, that time period  
4 should be excluded as a time period when  
5 the Government did not know of Mr. McDonough's  
6 whereabouts.

7 I think that basically sums up the  
8 evidence we will offer.

9 MS. BAMBERGER: If I may be permitted,  
10 the entire District Court record was certified  
11 and sent to the Court of Appeals for appeal  
12 and it would include a copy of the docket  
13 entries until the second Circuit decision.

14 THE COURT: Well, it would have to  
15 be something that occurred prior.

16 This case --

17 MR. LEVIN-EPSTEIN: I think the Government  
18 will be able to stipulate to certain dates  
19 appearing on the docket sheet or that would  
20 be on the docket sheet if that will be of  
21 any assistance.

22 MS. BAMBERGER: Some of them, yes,  
23 sure.

24 MR. LEVIN-EPSTEIN: Probably all of them.

25 MS. BAMBERGER: Okay.

1  
2 MR. LEVIN-EPSTEIN: The Government is  
3 ready to proceed if you would care to indicate  
4 how you would like it done.

5 THE COURT: You were unable to find  
6 the docket sheet?

7 MS. BAMBERGER: It is not in this  
8 folder.

9 Apparently, the Court of Appeals  
10 retains that document when it sends the rest  
11 of the record back but I can get it from the  
12 clerk's office.

13 MR. LEVIN-EPSTEIN: I believe Mrs.  
14 Bamberger and I can stipulate as to any of  
15 the significant dates that would be in issue  
16 as far as the docket sheet is concerned.

17 THE COURT: All right.

18 First of all, this defendant was  
19 arrested in May of 1973 -- May 14, 1973.

20 MR. LEVIN-EPSTEIN: That is correct,  
21 your Honor.

22 Then, on October 30th, 1973, was the  
23 indictment.

24 MS. BAMBERGER: That is correct.

25 MR. LEVIN-EPSTEIN: The indictment was



1  
2 mailed on October 30th, your Honor.

3 THE COURT: Right.

4 And then on November 16, 1973, was  
5 the filing of the Government's notice of  
6 readiness.

7 MR. LEVIN-EPSTEIN: That is a mistake.

8 The notice of readiness filed is  
9 dated November 16.

10 However, for whatever reason occurred  
11 in the clerk's office, the clerk's record  
12 reflect that the actual filing date of the  
13 notice of readiness was November 19.

14 THE COURT: So, November 19 is the  
15 date of filing.

16 MR. LEVIN-EPSTEIN: The Court will  
17 recall that during the initial hearings I  
18 represented to the Court that the notice of  
19 readiness was filed on the 16th and I based  
20 that on the typewritten date on the notice  
21 of readiness, November 16.

22 Later examination disclosed there was  
23 a stamp on the notice of readiness indicating  
24 it was filed on November 19 in the afternoon.

25 MS. BAMBERGER: The original is here.

1  
2 THE COURT: All right.

3 Now, was there some prior ruling in  
4 the record by me ?

5 I see your prior affidavit. Is there  
6 a transcript on it?

7 MR. LEVIN-EPSTEIN: Yes, your Honor.

8 Perhaps I can just find the appropriate  
9 portion for you.

10 THE COURT: All right.

11 (pause)

12 MS. BAMBERGER: It appears in the  
13 minutes of January 14, 1974 at page 28 and I  
14 have --

15 MR. LEVIN-EPSTEIN: Actually, your  
16 finding appears on the top of page 29 where  
17 after discourse, after the arguments given --  
18 and I quote lines three and four --

19 THE COURT: Page 29, you say?  
20

21  
22  
23 (continued on next page)  
24  
25



MR. LEVIN-EPSTEIN: Yes.

"We are not perfect and I don't believe a difference here of two days over six months would be attributable as I say to that period of time and given ten days to demand a magistrates hearing"-- talking about something else -- "which ought not to be charged against the defendant in this case and I find that it amply brings this case within the six months. I am ready to start the trial whenever you are ready."

(continued on next page)

MS. BAMBERGER: Page 28:

"I am simply saying that I am counting the time of delay such as is attributable to the mailing of a notice to an address which the Government had in its record but which you claim should have been changed to reflect a different address and I am saying that the time attributable to that is so minimal the excess, the two days excess of the six months you are talking about here and I am simply not going to dismiss a prosecution on that ground."

(continued on next page)



1  
2 THE COURT: Yes.

3 MS. BAMBERGER: In the process of  
4 preparing for the appeal it was discovered  
5 that in fact the delay had been five and  
6 not two days and that the two days was  
7 premised on the fact or on the misfact that  
8 the notice of readiness was filed on the  
9 16th when it was in fact filed on the 19th.  
10

11 MR. LEVIN-EPSTEIN: The Government's  
12 position is whether it is a day delay or a  
13 five day delay, it makes no difference because  
14 there are a combination of excludable periods  
15 far in excess of five days.

16 THE COURT: All right.

17 So, we all agree that the starting date  
18 is May 14, right?

19 MS. BAMBERGER: That is correct.

20 THE COURT: And therefore, if we follow  
21 the Second Circuit opinion strictly as they  
22 indicate it ought to be followed, the six  
23 months would have expired really, on November  
24 13.

25 MR. LEVIN-EPSTEIN: November 14, your  
Honor.

1  
2 THE COURT: Well, I would say it would  
3 expire on the 13th. You don't count the day  
4 of arrest as beginning --

5 MR. LEVIN-EPSTEIN: No, I don't believe  
6 so either under the Civil or Criminal Rules  
7 of Procedure. One full day is completed, the  
8 day after, when it begins.

9 THE COURT: All right. November 14.  
10 So, you are saying that what we are  
11 talking about here is five days delay.

12 MR. LEVIN-EPSTEIN: That is correct,  
13 your Honor.

14 It would be November 14 beginning and  
15 it would be the 15th, 16th, 17th, 18th and  
16 then completing, on the 19th, the day it  
17 was filed.

18 THE COURT: Your argument is that under  
19 the exceptional circumstances Rule --

20 MR. LEVIN-EPSTEIN: Under that, there  
21 would be a period of cooperation as defined in  
22 U.S. v. Valot and under another portion of Rule  
23 5.

24 THE COURT: Wait a minute. One thing  
25 at a time.



1  
2 MR. LEVIN-EPSTEIN: I'm sorry.

3 THE COURT: So, the Government is  
4 relying on 5(h), exceptional circumstances  
5 and you say the exceptional circumstances --

6 MR. LEVIN-EPSTEIN: Would be a period  
7 of cooperation.

8 THE COURT: A period of cooperation  
9 and the case you cite --

10 MR. LEVIN-EPSTEIN: U.S. v. Valot, 481  
11 Fd. 2d at page 22, a Second Circuit decision  
12 of last year.

13 The second excludable period would be  
14 under a different portion of Rule 5 providing  
15 that for a particular period of time, wherein  
16 the whereabouts of the defendant is not known --

17 THE COURT: Absence or unavailability?

18 MR. LEVIN-EPSTEIN: Correct, your Honor.

19 THE COURT: So, that is 5(d). That's  
20 what that is. It's really his absence. That  
21 is to say, his location, his absence or unavail-  
22 ability.

23 MR. LEVIN-EPSTEIN: Yes.

24 THE COURT: And that has to do with a  
25 time when he didn't respond to a notice sent

1  
2 to a certain address.

3 MR. LEVIN-EPSTEIN: He didn't respond  
4 to a notice sent to a certain address and we  
5 had no knowledge of where he was.

6 MS. BAMBERGER: Your Honor, that is  
7 an issue in dispute.

8 THE COURT: Is it really?

9 MR. LEVIN-EPSTEIN: One of the issues.

10 MS. BAMBERGER: One of the issues.

11 THE COURT: How about the cooperation  
12 issue?

13 MS. BAMBERGER: That issue is also  
14 in dispute, your Honor.

15 THE COURT: According to your affidavit  
16 on that second one --

17 MR. LEVIN-EPSTEIN: My affidavit, your  
18 Honor?

19 THE COURT: Yes.

20 "On October 31 a pleading notice was  
21 mailed to his address which was returned and  
22 could not be found."

23 MR. LEVIN-EPSTEIN: Paragraph 6.

24 THE COURT: Yes. That's what you say  
25 the facts were. I realize we have to go over this.



1  
2 So, on October 31, notice was mailed  
3 and that was to appear and plead, right?

4 MR. LEVIN-EPSTEIN: He was supposed  
5 to appear for a pleading on November 9.

6 THE COURT: All right.

7 He did not appear -- well, let's see.  
8 On November 5th it was re-mailed --

9 MR. LEVIN-EPSTEIN: You will note that  
10 in paragraph 7, the pleading notice was re-  
11 mailed.

12 Well, it was returned by the United  
13 States Postal Office as noted in paragraph 6.

14 THE COURT: So, the P.O. returned it  
15 and then on November 5, it was re-mailed to  
16 a different address?

17 MR. LEVIN-EPSTEIN: To an address  
18 provided by his brother with the hopes --  
19 my affidavit is refreshing my recollection --  
20 the theory I was operating under at that time  
21 was that if we couldn't reach him at the  
22 address we provided perhaps we could reach  
23 him at an address for his brother.

24 THE COURT: Also to appear and plead  
25 on the 9th?

1  
2 MR. LEVIN-EPSTEIN: Also to appear  
3 on November 9; correct.

4 THE COURT: So that on the 9th no  
5 appearance; bench warrant issued and that  
6 was to be stayed --

7 MR. LEVIN-EPSTEIN: Until November 13.

8 THE COURT: Until November 13 -- and  
9 then on November 12, the Government was notified  
10 by defense counsel that he, the defendant, would  
11 be in court on the 14th.

12 On November 14 he appeared and pled  
13 not guilty.

14 MR. LEVIN-EPSTEIN: That is correct.

15 THE COURT: All right.

16 So, I don't suppose there is anyway of  
17 finding out how soon you got back the first  
18 notice mailed on the 31st.

19 MR. LEVIN-EPSTEIN: We received it on  
20 November 5th.

21 THE COURT: It was received back on  
22 the 5th?

23 MR. LEVIN-EPSTEIN: Correct.

24 THE COURT: So roughly, five days.

25 MR. LEVIN-EPSTEIN: Exactly five days.



1  
2 MS. BAMBERGER: There is an unsworn  
3 statement of recollection by the United  
4 States Attorney and I just want to make it  
5 apparent that this isn't testimony --

6 MR. LEVIN-EPSTEIN: I will make it  
7 testimony. I was about to propose that,  
8 anyway.

9 THE COURT: Have you by any chance  
10 any envelope or anything like that?

11 MR. LEVIN-EPSTEIN: I can't show by  
12 direct evidence that it was received on  
13 November 5th but during the course of a  
14 statement I would make on the record under  
15 oath, my reference is to the note appearing  
16 in the file of the United States Attorney  
17 which refreshes my recollection and gives me  
18 a memory, that it was received by our office  
19 from the post office on November 5th and mailed  
20 out again that day.

21 THE COURT: Now, it resulted, as I  
22 see it, in the defendant appearing on the  
23 14th rather than the 9th. So, that sort of --  
24 that doesn't make ten days lost, does it,  
25 really?

1  
2 MR. LEVIN-EPSTEIN: No, but we are not  
3 looking for ten days.

4 THE COURT: I know that.

5 MR. LEVIN-EPSTEIN: That in itself  
6 would be the five days of an excludable period  
7 bringing us within the six month Rule.

8 MS. BAMBERGER: It's our contention that  
9 the Government knew of the change of address  
10 to which mail should be addressed to Mr. McDonough  
11 prior to the time that the notice to appear was  
12 mailed on the 31st.

13 THE COURT: Would that appear from some-  
14 thing in your files or something the defendant  
15 had?

16 MS. BAMBERGER: To some extent, not  
17 completely, it can be established by a statement  
18 of the Legal Aid Society Office practice which  
19 I have been advised -- I do not know it from  
20 my own personal knowledge -- but a secretary  
21 advises the Assistant United States Attorney  
22 as to a change of address when a defendant  
23 telephones it in.

24 It is also within my knowledge -- and  
25 once again, I do not know it personally --



1  
2 but from speaking with people, it has been  
3 made known to me that the secretary who records  
4 the change of address and the Legal Aid, did  
5 so in August, September or the first week of  
6 October and we know that because the person  
7 whose handwriting it is in, will identify the  
8 handwriting, has identified the handwriting  
9 as hers and she did work in the Legal Aid  
10 Eastern District Trial Office. She is normally  
11 assigned to the Southern District.

12 THE COURT: Would she know that it was  
13 communicated to the United States Attorney's  
14 Office?

15 MS. BAMBERGER: No. She would not testify  
16 to that.

17 THE COURT: So, there is still a gap  
18 there.

19 MS. BAMBERGER: Right.

20 Mr. Levin-Epstein states that on November  
21 5th he remailed the letter to the correct address  
22 and his affidavit, paragraph 7, says that they  
23 mailed it to his brother, James McDonough, 26  
24 Marvin Avenue and that was in fact the new  
25 address change.

1  
2 My question is, on November 5th, if  
3 the Government was able to mail it to that  
4 address on November 5th, how did it learn  
5 of that address on or before November 5th?

6 MR. LEVIN-EPSTEIN: I think the answer  
7 is self-evident.

8 During the course of the initial investi-  
9 gation, as the Court may recall, from the trial,  
10 there was testimony from in fact Mr. McDonough's  
11 brother, as to his address and in fact the  
12 investigation disclosed on the night of the  
13 arrest that Mr. McDonough had a brother living  
14 at 26 Marvin Avenue.

15 I cannot say that I sent it to that  
16 address with a hope he would receive it but it  
17 was a chance because it was the only address  
18 left to resort to.

19 I think there was just a bad choice  
20 of words on Miss Bamberger's part. I didn't  
21 personally mail it. It was mailed by my  
22 Secretary, Miss Pagoda.

23 MS. BAMBERGER: I stated that because  
24 we have the original sent to Mr. McDonough  
25 including the Newbridge Road address, a



notation by the post office that it was returned to the sender, the words "Levin-Epstein" on the envelope and then the new address "26 Marvin Avenue, Hicksville, New York, c/o of James McDonough" written in hand on the bottom of the envelope.

MR. LEVIN-EPSTEIN: I can explain the reference Miss Bamberger is making.

The name "Levin-Epstein" appearing on the front of the envelope is the type of notation made by mailroom personnel after determining what assistant is handling that case. They would make that notation on the upper right hand corner or any object so it would be routed to that assistant.

The writing on the bottom, I don't know where that came from, except I assume it is Miss Pagoda's writing after direction from me to send it to the 26 Marvin Avenue address.

MS. BAMBERGER: There is a second envelope sent in the way indicated by Mr. Levin-Epstein but the postmark is rubbed out so it doesn't indicate the date.

MR. LEVIN-EPSTEIN: As it sometimes occurs

1  
2 with the United States Government mail, there  
3 is no post mark that is legible.

4 May I suggest that an appropriate means  
5 to proceed from here would be for the Govern-  
6 ment to call its witnesses and supply to the  
7 Court under oath the facts as they transpired  
8 and to proceed from there.

9 THE COURT: Well, the facts with respect  
10 to the exceptional circumstances --

11 MR. LEVIN-EPSTEIN: We can do that right  
12 away.

13 THE COURT: All right. We'll do that  
14 now.

15 MR. LEVIN-EPSTEIN: The Government calls  
16 Mr. Guy P. Caputo.

17 G U Y P. C A P U T O, having first been  
18 duly sworn by the Clerk of the Court took the  
19 witness stand and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LEVIN-EPSTEIN:

22 Q what is your occupation?

23 A Special Agent with the United States Secret Service.

24 Q How long have you been so employed?

25 A A little over five years.



Q Agent Caputo, do you recall -- directing your attention to January 14, 1974, did you testify at the trial without a jury of one Patrick McDonough?

A Yes.

Q Was that non-jury trial presided over by Judge Neaher?

A Yes, it was.

Q Directing your attention, Agent Caputo, to May the 14th, 1973, on that day did you have occasion to make an arrest?

A On May 13, yes.

Q Who was arrested?

A Mr. McDonough.

THE COURT: It was May 13th, not the 14th?

THE WITNESS: Yes, it was.

Q On what day was Mr. McDonough arraigned?

A The following day, May 14th.

Q After arresting Mr. McDonough did you advise him of his rights?

A Yes.

Q Did he acknowledge those rights?

A Yes.

Q Did he agree to speak with you at that time?

A Yes.

1  
2 Q During that time would you tell us if Mr.  
3 McDonough had any discussion with you as to his potential  
4 cooperation?

5 A Yes.

6 Q Tell the Court in substance the conversation.

7 A Basically, the case involved some counterfeit money and  
8 Mr. McDonough was apprehended passing some counterfeit money  
9 and subsequent to the passing of the money and a short time  
10 thereafter, Mr. McDonough surrendered an additional quantity  
11 of counterfeit ten dollar bills and during the questioning  
12 regarding the source of this counterfeit currency, Mr.  
13 McDonough indicated that the source was a very close friend  
14 of his who had approached him approximately one month prior  
15 to this time and explained to him that this friend had a  
16 third party, another individual who had access to counter-  
17 feit currency.

18 Mr. McDonough explained that he asked the friend to  
19 act as an intermediary to obtain some of this counterfeit  
20 currency for him and Mr. McDonough continued that, as a  
21 favor to him, this individual acted as an intermediary and  
22 made contact to supply Mr. McDonough with counterfeit currency  
23 from a third party.

24 Q Following this conversation Agent Caputo, did  
25 you come upon or arrive upon a plan with Mr. McDonough as



1  
2 to what nature this cooperation would take?

3 A Well --

4 Q Let me rephrase the question -- as to what the  
5 next step you would take might be and the next steps he might  
6 take would be?

7 A Mr. McDonough was unwilling to identify this friend of  
8 his, this middle man so to speak, but he was willing to  
9 pursue the matter with this friend of his keeping his identity  
10 unknown to us and pursue the matter to see if he could identify  
11 this third party, the source of the counterfeit money and we  
12 agreed that this might be a plan that would succeed.

13 Q As a further part of this plan was any arrangement  
14 made between you and Mr. McDonough --

15 MS. BAMBERGER: I object. I think Mr.  
16 Caputo should testify himself.

17 MR. LEVIN-EPSTEIN: I will withdraw  
18 the question.

19 THE COURT: Why not let Mr. Caputo describe  
20 it as he recalls it.

21 MR. LEVIN-EPSTEIN: Very well, your Honor.

22 THE COURT: Try to be as specific as you  
23 can if possible, with respect to the lapse of  
24 time that went on. That is primarily what we  
25 are interested in.

1  
2 A We had discussed this possibility about Mr. McDonough  
3 foregoing the identity of this intermediary and arriving at  
4 the identity of the source of the counterfeit money because  
5 it was in our interest to find -- it was in the interest  
6 of the Secret Service to find out who the source of the  
7 counterfeit money really was.

8 At the time of his arrest Mr. McDonough agreed that  
9 he would pursue the matter with this friend of his to see  
10 if he could identify the third party, the actual source of  
11 the counterfeit money without actually revealing the identity  
12 of his friend to the Secret Service.

13 This was agreed upon at the initial interview which  
14 would have been the time Mr. McDonough was arrested.

15 A Agent Caputo, let me ask you this: did you  
16 agree upon what, if anything, Mr. McDonough would do after  
17 he determined the identity of the source of the counterfeit  
18 money?

19 A Subsequent to this initial interview there were several  
20 telephone discussions between myself and Mr. McDonough and  
21 we pursued the matter.

22 Q Step by step then after the initial interview  
23 with Mr. McDonough, when was the next time you spoke with him  
24 to your best recollection?

25 A I believe sometime within that next week.



1  
2 Mr. McDonough was arrested early on a Sunday morning  
3 and it was sometime during that following week that I spoke  
4 with Mr. McDonough over the phone.

5 Q Did you call him or did he call you?

6 A I don't recall that.

7 Q During the course of this phone conversation do  
8 you recall what you discussed?

9 A Yes, we discussed the progress that Mr. McDonough was  
10 making in regard to his friend and the identity of his source.

11 Q What did he tell you?

12 A He explained that his friend had heard about -- aware  
13 that he was arrested for passing counterfeit money and we  
14 had initially explored the possibility of maybe introducing  
15 and undercover agent to Mr. McDonough's friend while keeping  
16 Mr. McDonough's friend's identity unknown to the agent.

17 MS. BAMBERGER: I object. I don't  
18 understand whether this is part of the conver-  
19 sation with Mr. McDonough and if not, then I  
20 don't see that it was relative to this matter --  
21 the idea of introducing an undercover agent.

22 THE WITNESS: It was one of the possibilities,  
23 one of the options discussed at the time of Mr.  
24 McDonough's arrest.

25 MS. BAMBERGER: With whom?

1  
2 THE WITNESS: With Mr. McDonough.

3 MS. BAMBERGER: That's what I  
4 wanted to know.

5 THE COURT: So, at the initial discussion  
6 there were two things -- one is cooperation in  
7 revealing a source which brought about the compli-  
8 cation that he was unwilling to reveal the iden-  
9 tity of this close friend?

10 THE WITNESS: Correct.

11 THE COURT: And to that you suggested,  
12 if I understood your testimony, that the friend  
13 could still be protected if it was possible for  
14 the Secret Service to get your own informant  
15 introduced.

16 THE WITNESS: That is correct -- have  
17 an undercover agent --

18 THE COURT: I am sorry. I meant under-  
19 cover agent.

20 THE WITNESS: Yes and more or less  
21 make Mr. McDonough's friend an unwilling  
22 informant.

23 Q As to the conversation you testified about,  
24 about a week following Mr. McDonough's arrest, did you  
25 again have a phone call with Mr. McDonough?



1  
2 A Yes.

3 Q How long after that?

4 A Within a period of time within the following weeks --  
5 two weeks after Mr. McDonough's arrest.

6 Q Was this a telephone conversation as well?

7 A Yes, I would have to say to the best of my recollec-  
8 tion. I can't say if there were more than one phone call  
9 per week or two telephone calls but it is my recollection  
10 that there was at least one call per week about three weeks  
11 subsequent to Mr. McDonough's arrest and there were times  
12 when Mr. McDonough would call my office and leave a  
13 message that he called or I would contact Mr. McDonough  
14 at his place of employment and we would speak that way.

15 Q There were times when you called him and times  
16 when you received calls from him?

17 A Yes.

18 Q Can you tell the Court approximately, to the  
19 best of your knowledge, how many times you had these types  
20 of conversations with Mr. McDonough following his arrest --  
21 how many times did you speak with Mr. McDonough following  
22 his arrest?

23 A I would say about four times -- four different tele-  
24 phone conversations.

2 THE COURT: And if I may inquire --

1  
2 talking about now over what period of time --  
3 from May 14 or 13?

4 THE WITNESS: I would say that on an  
5 average of one call per week.

6 THE COURT: So that would be sort of  
7 to the middle of June, is that what you are  
8 saying?

9 THE WITNESS: Maybe the first week of  
10 June may have been the last conversation we  
11 had.

12 There were no records kept and it's  
13 just on my own personal recollection.

14 THE COURT: All right.

15 Now, by the first week of June, what  
16 was the situation?

17 THE WITNESS: The situation was that  
18 in one or more of the telephone calls that we  
19 had -- myself and Mr. McDonough -- Mr. McDonough  
20 explained that this friend who wished to remain  
21 anonymous was already aware that he was arrested  
22 and it would be impossible, this being the case,  
23 to introduce and undercover agent to his friend  
24 because his friend would be suspicious.

25 So we discussed the possibility of Mr.



McDonough speaking to his friend to see if his friend would introduce Mr. McDonough to this third party -- the source of the counterfeit money.

Q During any of these conversations up until the beginning of June as you testified Agent Caputo, did Mr. McDonough tell you that he didn't want to talk to you anymore?

A No.

Q That he didn't want to be involved with this case any more as far as you were concerned?

A Well, that would have been the last conversation that we had where he stated that he didn't want to pursue the matter any further.

There was no way that he could proceed without identifying this friend of his which he was unwilling to do. So, it stopped there.

Q When did that conversation occur?

A That, I would say happened about three weeks after Mr. McDonough's arrest.

THE COURT: So that would still be somewhere in the neighborhood of the end of the first week in June or thereabouts?

THE WITNESS: Approximately, your Honor.

1  
2 Q Following Mr. McDonough's arrest did there  
3 come a time when you prepared a report of investigation  
4 relating to this case?

5 A Yes, I did.

6 Q And during the course of your preparation of  
7 this report of investigation did you list all the salient  
8 facts relating to the arrest?

9 A Yes.

10 Q Is this your formal practice?

11 A Yes.

12 Q And the standard operating procedure of the  
13 Secret Service?

14 A I would say it is my standard operation.

15 MR. LEVIN-EPSTEIN: I ask this document  
16 be marked for identification.

17 THE CLERK: A four page document  
18 marked for identification as Government exhibit  
19 1 at this proceeding.

20 (So marked)

21 Q Agent Caputo, I show you what has been marked  
22 as Government's exhibit 1 for identification and I ask you  
23 if you recognize it?

24 A Yes I do.

25 Q What is it?



1  
2 A It is a copy of the report which I prepared in a  
3 narrative form stating what transpired during the arrest  
4 of Mr. McDonough on May 13.

5 Q Does a signature appear on the first page of  
6 this report?

7 A Yes.

8 Q What signature is that?

9 A My signature.

10 Q Is that an original signature?

11 A Yes.

12 Q Do you acknowledge it as being your own?

13 A Yes.

14 Q Is there a date that appears following that  
15 signature?

16 A 5/15/73.

17 Q What does that reflect?

18 A The date that either the report was dictated or the  
19 original of the report and final copy was finally transcribed.

20 Q In other words, this report was made on or  
21 about the 15th day of May, 1973?

22 A That is correct.

23 MR. LEVIN-EPSTEIN: Your Honor, I  
24 offer it in evidence.

25 MS. BAMBERGER: No objection.



THE CLERK: Government exhibit one  
previously marked for identification now  
marked in evidence.

(So marked)

Q Agent Caputo, I direct your attention to the  
third page of this report at the end of the second paragraph.

Does there appear a sentence where I am  
indicating?

A Yes.

Q Would you read that sentence to the Judge out  
loud, please?

A "According to Mr. McDonough, none of his associates  
had any knowledge of his counterfeit activity."

Q Next sentence?

A "McDonough was unwilling to identify his friend since  
McDonough said he was only doing him a favor. However, he  
did agree to cooperate in identifying his friend's source  
of the counterfeit notes."

Q As you testified earlier, of course, this  
cooperation extended for approximately three weeks?

A Approximately, that is correct.

MR. LEVIN-EPSTEIN: No further questions.

MS. BAMBERGER: May I have a few moments?

THE COURT: Certainly.

(pause)

MS. BAMBERGER: I have one question with respect to this report. It indicates -- I am not as familiar with it as the United States Attorney so I will just take another minute to --

MR. LEVIN-EPSTEIN: I am sorry. I didn't hear you.

MS. BAMBERGER: There is something in the report I want to ask him about. I have to find the place.

(pause)

CROSS EXAMINATION

BY MS. BAMBERGER:

Q On page of the report would you please look at the sixth full paragraph. Could you read the last sentence of that paragraph?

A "He consented to a search of his apartment, 26 Marvin Avenue, Hicksville, Long Island, where he stated he resided with his brother James and his sister-in-law."

MS. BAMBERGER: Thank you.

I would like to indicate for the record that the defendant identified his address as 26 Marvin Avenue.

Q Could you read the last paragraph on that page



starting with --well--why don't you start reading from the beginning of that paragraph.

A "Detective Kacinski, Special Agent Bergin and the writer proceeded to the above address where we personally interviewed James McDonough.

\* According to McDonough his brother Patrick only resided at this location on weekends and during the week practically lived at another location in Hicksville, Long Island.

\* James McDonough denied any knowledge of counterfeit currency"--

MS. BERGMAN: That is enough. Thank you.

At the least, this would indicate that the defendant had two places of residence and I will make further argument on that at the conclusion.

RE-DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Agent Caputo, when Mr. McDonough was arrested did you take his address for purposes of processing him?

A Initially when we talked to him he gave us one address.

Q Was that 26 Marvin Avenue?

A Yes it was.

Q Did you then ask him his address?

1  
2 A He said this was his address but we later learned  
3 from his brother as I relate in that paragraph -- that his  
4 brother told us 26 Marvin Avenue was an address which the  
5 defendant used only on the weekend but that during the  
6 week he had another apartment which he resided in.

7 MR. LEVIN-EPSTEIN: No further  
8 questions.

9 RE-CROSS EXAMINATION

10 BY MS. BAMBERGER:

11 Q Do you know if counsel was assigned to represent  
12 Mr. McDonough at his arraignment which took place, according  
13 to your testimony, on May 14?

14 MR. LEVIN-EPSTEIN: Objection as to  
15 relevancy.

16 A I don't recall that.

17 Q During the period --

18 THE COURT: Wait a minute. Would you  
19 explain the relevancy?

20 MS. BAMBERGER: Yes, your Honor.

21 If Mr. McDonough had counsel at the  
22 time that the Government agents were telephoning  
23 him or he was telephoning the agent -- if we  
24 accept Mr. Caputo's testimony it is my position  
25 that Mr. McDonough -- that Mr. Caputo should



1  
2 have been in contact with Mr. McDonough's  
3 attorney so that Mr. McDonough could have  
4 agreed or not agreed or whatever the situation  
5 was with respect to cooperation after speaking  
6 with his attorney. Apparently, these conver-  
7 sations went on after Mr. McDonough had  
8 assigned counsel.

9 MR. LEVIN-EPSTEIN: Exactly.

10 THE COURT: Well, all right. So  
11 your point is that -- well -- I don't know  
12 if we got the agent's answer on that. I  
13 will take it for what it is worth -- do you  
14 know?

15 THE WITNESS: No, I don't your Honor.  
16 I don't even recall if I was present at the  
17 arraignment.

18 Q Did you at any time speak with an attorney  
19 assigned or retained to represent Mr. McDonough?

20 A To my recollection no, I did not.

21 MS. BAMBERGER: No further questions,  
22 your Honor.

23 MR. LEVIN-EPSTEIN: No further questions.

24 THE COURT: Well, is there any way in  
25 which we can determine whether counsel was assigned?

1  
2 MR. LEVIN-EPSTEIN: Yes. The Govern-  
3 ment will stipulate that counsel in the form  
4 of the Legal Aid Society was assigned to  
5 represent Mr. McDonough on the day of his  
6 arraignment.

7 No. In fact, my file reflects that  
8 he was arraigned without counsel but that  
9 the Legal Aid Society was appointed to repre-  
10 sent him and we can only assume that the procedure  
11 was that Mr. McDonough was instructed by the  
12 magistrate -- I did not handle the arraignment --  
13 that he was advised to seek out the Legal Aid  
14 Society by the magistrate and inform them of  
15 the arraignment.

16 According to the file there was no  
17 assistant United States Attorney present at  
18 the date of the arraignment. The matter was  
19 adjourned to June 8 at which time the defendant  
20 appeared and a hearing was waived.

21 THE COURT: Did you by any chance after  
22 this period of telephoning back and forth and  
23 apparently coming to an end sometime around  
24 the first week in June, prepare any other  
25 report concerning, you might say, the unwillingness



1  
2 or inability of the defendant to cooperate?

3 THE WITNESS: No, your Honor.

4 THE COURT: During the period of this  
5 telephoning communications were you in touch  
6 with an assistant United States Attorney  
7 regarding the case?

8 THE WITNESS: I don't believe so.

9 THE COURT: This was a case as I under-  
10 stand it, where the local police made the  
11 initial arrest?

12 THE WITNESS: Correct, your Honor.

13 THE COURT: You were call to the local  
14 station house or precinct to interview the  
15 defendant?

16 THE WITNESS: That is correct, your  
17 Honor.

18 THE COURT: And then you eventually  
19 took him into custody, is that correct?

20 THE WITNESS: Our service did but I  
21 personally did not.

22 THE COURT: Did you at that time consult  
23 with an Assistant United States Attorney regarding  
24 taking him into custody -- taking the defendant  
25 into custody?

1  
2 THE WITNESS: I don't recall whether  
3 or not I did. I don't believe I did.

4 THE COURT: Did you at any point have  
5 contact with an Assistant United States  
6 Attorney in relation to the prosecution of  
7 this case?

8 THE WITNESS: I believe it was Monday  
9 morning --

10 THE COURT: At the time of arraignment?

11 THE WITNESS: Prior to the time of  
12 arraignment -- that I called and spoke with  
13 an Assistant.

14 THE COURT: Would that have been in  
15 connection with the preparation of a complaint?

16 THE WITNESS: Yes.

17 THE COURT: Did you sign that complaint?

18 THE WITNESS: I don't recall.

19 MR. LEVIN-EPSTEIN: The Government will  
20 stipulate that the complaint was -- that the com-  
21 complainant in this matter was Agent Caputo.

22 MS. BAMBERGER: I can't stipulate to  
23 that. I haven't seen it.

24 MR. LEVIN-EPSTEIN: That is a public  
25 document your Honor and if necessary, we will



1  
2 have the magistrate's file brought in.

3 THE COURT: Normally I have the  
4 magistrate's file before me but I don't  
5 see it here. I don't know what happened  
6 to it.

7 When if ever did you next consult the  
8 United States Attorney's office with regard  
9 to further prosecution of the case?

10 THE WITNESS: There were phone calls  
11 which I made to the initial attorney -- I  
12 can't remember the assistant who handled  
13 the case. We do this for periodic check-ups  
14 to determine how far the judicial proceeding  
15 has gone.

16  
17 THE COURT: Would you have been in  
18 touch with the assistant during this period  
19 of telephone communications when you believed  
20 that there was a possibility of cooperation  
21 that existed?

22 THE WITNESS: I may have but I can't  
23 recall whether or not I was.

24 THE COURT: But when it came to an end,  
25 apparently the first week in June, would you  
have then been in touch with the Assistant

1  
2 United States Attorney regarding further  
3 proceedings against the defendant?

4 THE WITNESS: I believe I would have  
5 but I can't say whether or not I did.

6 THE COURT: You can't say for sure.

7 And your best recollection now, is  
8 that the period during which the possibility  
9 of cooperation existed and was being explored  
10 extended from May 14 or thereabouts up to about  
11 the end of the first week in June?

12 THE WITNESS: I would say approximately  
13 three weeks, if that would be three weeks.

14 MR. LEVIN-EPSTEIN: May I indicate at  
15 this point to the Court, for I feel it is  
16 pertinent right at this point in the Court's  
17 questioning that if the Court pleases, or  
18 wishes, the Government will call the Assistant  
19 United States Attorney, Howard Stechel, and  
20 have him identify in the jacket of the  
21 United States Attorney's file a notation he  
22 made dated May 14, 1973 and I will read it  
23 for the record: "Defendant released to cooperate  
24 with Secret Service Agent re: source of  
25 counterfeit bills." That is dated May 14 and



1  
2 we can call Mr. Stechel.

3 THE COURT: Is there a futther entry  
4 in the file with respect to the ending of  
5 the period of cooperation?  
6

7 MR. LEVIN-EPSTEIN: No, your Honor.  
8 The next reference in the file made by Mr.  
9 Stechel would have been on June 8 and the  
10 only notation is "Hearing waived", initials  
11 "H.J.S." -- the preliminary hearing.

12 THE COURT: Waived by the defendant?

13 MR. LEVIN-EPSTEIN: Yes.

14 THE COURT: Would the defendant have  
15 been present before the magistrate at that  
16 time?

17 MR. LEVIN-EPSTEIN: Probably. Of  
18 course. June 8 was the date on which the  
19 matter was adjourned to after the initial  
20 arraignment.

21 THE COURT: I wouldn't recall that --

22 MR. LEVIN-EPSTEIN: I just mentioned  
23 it and I thought you would have remembered  
24 it from my previous remark.

25 THE COURT: But you are talking about  
a magistrate's arraignment?

1  
2 MR. LEVIN-EPSTEIN: Yes. Badly  
3 phrased.

4 He was arraigned without counsel  
5 and released on a personal recognizance bond  
6 and the matter was adjourned until June 8.

7 THE COURT: Before the magistrate?

8 MR. LEVIN-EPSTEIN: Yes. And -- of  
9 course this is hearsay -- on June 8 there is  
10 a notation "Hearing waived (see over)". On  
11 the reverse there is a notation of May 14 and  
12 a reference to the previous notation.

13 "Defendant released to cooperate with  
14 Secret Service Agent re: counterfeit bills",  
15 initials "H.J.S."

16 THE COURT: Do you want Mr. Stechel?

17 MS. BAMBERGER: I will accept that Mr.  
18 Stechel wrote on the back of the file that  
19 the defendant was released. I do not concede  
20 the fact but I will agree that he wrote it.

21 THE COURT: Perhaps you had better make  
22 a call and see if Mr. Stechel is available and  
23 we will have him down here.

24 MR. LEVIN-EPSTEIN: I have not thought  
25 it necessary to confer or discuss this matter



1  
2 with Mr. Stechel and he will be somewhat  
3 surprised to be called as a witness on  
4 such short notice.

5 THE COURT: Well, we will search his  
6 recollection about the file.

7 MR. LEVIN-EPSTEIN: I would ask that  
8 the actual United States Attorney's file not  
9 be marked.

10 (pause)

11 MR. LEVIN-EPSTEIN: Mr. Stechel is not  
12 in his office. He is apparently away from his  
13 desk.

14 THE COURT: Is there anything further  
15 in the way of questions to Agent Caputo before  
16 we let him go?

17 MS. BAMBERGER: Yes, your Honor.

18 RECROSS EXAMINATION

19 BY MS. BAMBERGER CONTINUING:

20 Q I believe from his Honor's questioning you  
21 indicated that during the period in which you say Mr.  
22 McDonough was cooperating you didn't speak to the Assistant  
23 United States Attorney on the case with respect to that  
24 cooperation or with respect to the status of the case as it  
25 was being investigated by you?

MR. LEVIN-EPSTEIN: Objection as to form. I am not sure what the question is.

Q During that period of three weeks in which you say Mr. McDonough had agreed to cooperate or indicated that he might cooperate --

MR. LEVIN-EPSTEIN: Objection as to the characterization of the testimony. Agent Caputo was testifying that he was cooperating; not that he might.

Q Did you testify that he was cooperating?

A Yes.

Q In that period did you speak with the Assistant United States Attorney assigned to the case?

A I don't believe I did. I might have. I don't know.

Q And do you recall if you spoke with him about the fact or the intent to cooperate on the part of Mr. McDonough?

A I just said I do not recall whether I spoke with him.

Q They are two different questions and I wanted to get both answers.

A Okay.

I indicated to the Assistant United States Attorney when Mr. McDonough was arraigned about his willingness to cooperate.



1  
2 However, during that three week period when Mr.  
3 McDonough and I myself telephonically communicated, I do  
4 not recall whether or not I actually gave status reports on  
5 the progress of Mr. McDonough's cooperation to the assistant  
6 United States Attorney.

7 Q Is it the usual procedure of the Secret Service  
8 in cases of this type to speak with the counsel of the  
9 defendant who is cooperating?

10 MR. LEVIN-EPSTEIN: Objection.

11 MS. BAMBERGER: It is our position  
12 when counsel is assigned defendant has the  
13 right not to be telephoned or feel compelled  
14 to telephone an agent or government official  
15 without his lawyer being involved in the process.

16 MR. LEVIN-EPSTEIN: Objection renewed.  
17 There is no issue here as to whether or not  
18 there was a violation of the Messiah Doctrine.  
19 The only issue is whether or not the defendant  
20 was cooperating.

21 THE COURT: I think that is right. I  
22 would question the relevance as far as this  
23 remand is concerned. The issue is whether  
24 or not there was a violation of the 6 months  
25 Rule and I believe if any effort is to be made

1  
2 on the other points it could not be done  
3 within the framework of this hearing.  
4

5 MS. BAMBERGER: I object to your Honor's  
6 ruling and I will refrain from asking any  
7 further questions.

8 THE COURT: You have no further questions?

9 MR. LEVIN-EPSTEIN: I would like to  
10 ask that Agent Caputo be excused. He has to  
11 make a plane, your Honor.

12 THE COURT: All right.

13 MR. LEVIN-EPSTEIN: May we take a brief  
14 recess so I can speak with Mr. Stechel?

15 THE COURT: All right, why don't we take  
16 a few minutes.

17 (Recess taken)

18 MR. LEVIN-EPSTEIN: Thank you for the  
19 recess, your Honor. The Government is ready  
20 to proceed.

21 THE COURT: Surprised Mr. Stechel?

22 MR. STECHEL: Yes indeed.

23 H O W A R D J. S T E C H E L, having  
24 first been duly sworn by the Clerk of the Court  
25 took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:



Q What is your occupation?

A Assistant United States Attorney in the Eastern District of New York.

Q How long have you been so employed?

A Over three years.

Q Directing your attention to the month of May in 1973, were you employed as an Assistant United States Attorney?

A Yes.

Q Eastern District?

A Yes.

Q Were you assigned at that time in the criminal division?

A Yes.

Q I direct your attention to the name Patrick J. McDonough and ask you if you are familiar with that name?

A I know of that name.

MR. LEVIN-EPSTEIN: May I request permission to lead the witness through the preliminaries of this matter?

THE COURT: You may. I am sure you will rise to the objections when needed.

MS. BAMBERGER: Yes, your Honor.

Q Directing your attention to May 14, 1973, did you,

as an Assistant United States Attorney, prepare and participate in the arraignment of one Patrick J. McDonough?

A Do you have anything that might refresh my memory on the subject as to a specific date?

MR. LEVIN-EPSTEIN: I would ask that --

I am now holding the actual and original District Court file and the only copy. I am referring solely to the jacket itself and not its contents and I would ask that it not be marked and I have shown the jacket to Mrs. Bamberger and apparently there is no objection.

Q I show you the District Court file in the case of Patrick J. McDonough which had been assigned you as attorney's file number 73 CR 954. Directing your attention particularly to and only the jacket of that file, I ask you if there is a notation following the date 5/14/73?

A Yes. This file refreshes my recollection.

Under a schedule of events -- lower part of the jacket -- I recognize my own handwriting and initials "H. J.S.", 5/14/73 in the case of Patrick J. McDonough.

Q After having refreshed your recollection can you tell the Court what occurred on that day in reference to this case?

A The defendant was arraigned on that date and according



1  
2 to my own handwriting a hearing was adjourned in the matter  
3 until the following June 8 and furthermore, the defendant  
4 was released upon a personal recognizance bond in the sum  
5 of one thousand dollars.

6 Q Now, I ask you if you have any independent  
7 recollection, Mr. Stechel, of having made -- withdrawn --  
8 have you any independent recollection as to whether or not  
9 you were informed on the 14th day of May as to whether or  
10 not the defendant, Patrick J. McDonough was desirous of  
11 cooperating with the Government authorities?

12 MS. BAMBERGER: I object to the  
13 phrasing of the question. Mr. McDonough's  
14 desires are irrelevant.

15 Q Did you have any information imparted to you  
16 as to whether or not Mr. McDonough was cooperating with  
17 the Government authorities that you recollect?

18 A Well, I recall this -- I recall that I was advised by  
19 Government agents -- agent or agents -- that at the time  
20 that the defendant had indicated an intention to cooperate  
21 and that as a result we had agreed -- that is I and the  
22 Government agent in charge of the case -- we would agree  
23 to the release of the defendant in the nominal sum of one  
24 thousand dollars personal recognizance bond in the hopes  
25 that he would carry out his stated intention to cooperate

1  
2 and as I recall, this was a counterfeiting case where the  
3 defendant was charged with possession of a fairly substantial  
4 sum of United States dollar bills -- I don't recall if they  
5 were ten or twenty dollar bills and I think it was ten  
6 thousand dollars but I don't recall definitely. But it was  
7 bogus currency and we had hopes of tracing the source and  
8 perhaps seizing equipment and such. But that is why we  
9 agreed to the favorable terms of his release.

## 10 CROSS EXAMINATION

11 BY MS. BAMBERGER:

12 Q Do you have any idea or know how long this period  
13 of cooperation took place?

14 A You mean actual cooperation after the arraignment date?

15 Q Your file indicates that you were advised after  
16 the arraignment date that he intended to cooperate.

17 Do you know when this period of cooperation, as  
18 the agent said, took place and ended?

19 A No. I don't know at all.

20 MS. BAMBERGER: No further questions.

21 THE COURT: Did you have an opportunity  
22 to keep the official file and determine whether  
23 or not there would be any note or scrap of paper  
24 or notation that might refresh your recollection  
25 on that score?



1  
2 THE WITNESS: I haven't. I have  
3 looked at the file just before I came in  
4 as a witness very cursorly. Perhaps I  
5 should look at it again.

6 THE COURT: Well, would you like to  
7 look at it again?

8 THE WITNESS: I would appreciate that  
9 opportunity.

10 THE COURT: With the thought in mind  
11 whether there is anything in the file indicating  
12 whether or not you might have been informed that  
13 the defendant was no longer cooperating and it  
14 would be necessary to go forward with the prose-  
15 cution of the case, very well.

16 (Document handed to witness)

17 (Pause)

18 MR. LEVIN-EPSTEIN: Let the record indi-  
19 cate that I have handed the District Court file  
20 in its --

21 THE COURT: You mean the United States  
22 Attorney's file.

23 MR. LEVIN-EPSTEIN: That is correct. When  
24 I say United States Attorney's District Court I  
25 mean our file as opposed to an appeals file.

1  
2 I have handed the file in its entirety  
3 to the witness for the purpose of refreshing  
4 his recollection.

5 THE WITNESS: If I may your Honor.

6 I wrote a memo which is in this file  
7 to Mr. Boyd who at that time was -- I mean  
8 September 18, 1973, who at that time was the  
9 chief of the criminal division, in reference  
10 to Patrick J. McDonough and the occasion for  
11 this was my leaving the criminal division and  
12 entering the civil division and writing memo-  
13 randa on various cases pending.

14 "Patrick J. McDonough. This case  
15 involves the possession of approximately 72  
16 counterfeit bills by McDonough. The defendant  
17 waived hearing in June, 1973 and was released  
18 to cooperate with Secret Service Agent Guy  
19 Caputo. The Agent should be contacted con-  
20 cerning the progress of the defendant's  
21 cooperation."

22 So on that date it would appear that  
23 I was not aware that it had terminated.

24 MR. LEVIN-EPSTEIN: May I point out  
25 to the Court that the document which Mr. Stechel



1  
2 refreshed his recollection with is consistent  
3 with Mr. Caputo's saying he wan't sure whether  
4 he had ever spoken with an Assistant United  
5 States Attorney as to the progress of Mr.  
6 McDonough's cooperation.

7 MS. BAMBERGER: Mr. Caputo testified  
8 that whatever cooperation existed ended in  
9 the first week of June. Mr. Stechel's memo-  
10 randum indicated that he thought it might have  
11 been going on as of September 18, which I think  
12 establishes the fact that he didn't really know  
13 anything about what was happening.

14 MR. LEVIN-EPSTEIN: On the contrary.

15 It means that the agent had not informed  
16 Mr. Stechel and that after the arraignment Mr.  
17 McDonough agreed to cooperate and it corroborates  
18 Mr. Caputo's testimony that he had not notified  
19 any Assistant United States Attorney whether  
20 the cooperation terminated.

21 Had Mr. Stechel contacted Mr. Caputo  
22 on September 18 or any date previous up until  
23 the beginning of June, he would probably -- I  
24 assume from Agent Caputo's testimony -- he  
25 would have been told that he was no longer

1  
2 cooperating.

3 THE COURT: That is the point. My  
4 only question was if Mr. Stuchel knew when  
5 the period of cooperation lasted and it appears  
6 he wouldn't know.

7 MR. LEVIN-EPSTEIN: The answer was  
8 self-evident. The Government does not dispute  
9 that.

10 THE WITNESS: If I may say, I wasn't  
11 advised it was terminated and on September 18  
12 I was certainly not advised it was terminated.  
13 I am not sure -- as far as opportunity I might  
14 find out -- during the month of August I was  
15 hospitalized for abdominal surgery so I wasn't  
16 in the office and when I came back the memo  
17 was written. I was never advised there was  
18 an end to cooperation and so I never knew  
19 the extent or quality of the cooperation, frankly.

20 MR. LEVIN-EPSTEIN: No further ques-  
21 tions of the witness, your Honor.

22 THE COURT: All right. Thank you.

23 MR. LEVIN-EPSTEIN: The only other  
24 witness the Government intended to call --  
25 and I would ask to be allowed to take the oath



1  
2 myself and testify as to my recollection with  
3 respect to the mailing of the document.

4 THE COURT: Would that have been  
5 handled by you?

6 MR. LEVIN-EPSTEIN: Under my supervision.

7 THE COURT: Is there anyone presently  
8 upstairs who would have taken care of it?

9 MR. LEVIN-EPSTEIN: I spoke with Miss  
10 Geraldine Pagoda who was my secretary at the  
11 time and she indicated to me she has no inde-  
12 pendent recollection of the matter.

13 If Miss Bamberger wants to call her as  
14 a witness she is free to do so.

15 THE COURT: Is there anything in the  
16 United States Attorney's file that would  
17 enlighten us?

18 MR. LEVIN-EPSTEIN: Well, we have a  
19 carbon copy of a pleading sent out on October  
20 31 used with a number of other documents to  
21 refresh my recollection on this matter in  
22 preparation for today's hearing. If I can  
23 just find it now. Here it is, your Honor.

24 There is a carbon copy of the notice  
25 of pleading sent out dated October 31 --

1 actually marked "mailed October 31, 1973"  
2  
3 informing the defendant Patrick J. McDonough  
4 that he is to appear before this Court on  
5 November the 9th to answer charges contained  
6 in an indictment filed against him.

7 THE COURT: Is that a copy that you  
8 are holding?

9 MS. BAMBERGER: Yes. I would stipulate  
10 to that and I have the original Mr. McDonough  
11 ultimately received.

12 MR. LEVIN-EPSTEIN: I am not offering  
13 the document for evidence but merely --

14 THE COURT: Can we regard it as a  
15 stipulated fact that the notice to appear for  
16 arraignment on an indictment was sent to the  
17 defendant on October 31?

18 MS. BAMBERGER: Yes.

19 MR. LEVIN-EPSTEIN: Correct.

20 THE COURT: And then does your file --  
21 you say you have an original there. I suppose  
22 you have no way of knowing from that when that  
23 actually was received; is that right? That  
24 is to say whether, based on our earlier dis-  
25 cussions, that there had been a mailing to



1  
2 the 26 Marvin Avenue --

3 MS. BAMBERGER: No, this was the  
4 first address.

5 THE COURT: The Newbridge address.

6 MS. BAMBERGER: Yes.

7 THE COURT: There is nothing in your  
8 file indicating that; is that right?

9 MS. BAMBERGER: I have the envelope  
10 which does not indicate when it was received  
11 by the post office or marked --

12 THE COURT: That is the envelope  
13 addressed to 26 Marvin Avenue?

14 MS. BAMBERGER: No, to Newbridge --  
15 the original envelope that was sent.

16 THE COURT: How do you happen to have  
17 that?

18 MS. BAMBERGER: Mr. McDonough ultimately  
19 received the notice but after the scheduled  
20 November 9th arraignment date. The United  
21 States Attorney sent it out again.

22 THE COURT: Oh. The same envelope  
23 was simply remailed?

24 MR. LEVIN-EPSTEIN: No.

25 THE COURT: How was it done?

1  
2 MR. LEVIN-EPSTEIN: If I were to  
3 testify -- and I will give it informally  
4 at this point --

5 THE COURT: Perhaps it can be the  
6 subject of stipulation.

7 MR. LEVIN-EPSTEIN: Yes, except Mrs.  
8 Bamberger has no knowledge of what I'd testify  
9 to so it can't be.

10 My recollection of this mailing inci-  
11 dent is as follows: The original notice of  
12 pleading, as we stipulated, October 31, 1973 --

13 THE COURT: Incidentally, assuming that  
14 after Mr. Stechel left the criminal division  
15 following his memoranda, you were the one who  
16 took over this case?

17 MR. LEVIN-EPSTEIN: There was a notation  
18 that it was assigned very briefly to William  
19 Dertinger and then to me.

20 THE COURT: Yes.

21 MR. LEVIN-EPSTEIN: But there is no  
22 indication that he took any action.

23 THE COURT: My own recollection is  
24 that he left the office.

25 MR. LEVIN-EPSTEIN: Yes.



1  
2  
3 The case was assigned to Mr. Stechel  
4 on May 14, 1973 and reassigned to Mr. Dertinger  
5 -- it looks like August sometime of 1973 and  
6 then reassigned to me --

7 THE COURT: Well, it was not prior to  
8 the September 18 memo of Mr. Stechel, was it?

9 MR. LEVIN-EPSTEIN: I can check with  
10 our administrative office but I really don't  
11 know. I can't make out the date.

12 The case was eventually assigned to me  
13 on October 24, 1973, the day after I was appointed  
14 to the position.

15 THE COURT: I see.

16 All right. Anyway --

17 MR. LEVIN-EPSTEIN: In any event, as  
18 we stipulated, October 31 a notice of pleading  
19 was sent out in this envelope.

20 THE COURT: Which was marked "Returned  
21 undeliverable."

22 MR. LEVIN-EPSTEIN: This, as addressed  
23 to 121 Newbridge Road, Hicksville New York,  
24 was returned to the office of the United States  
25 Attorney with its contents, the original notice  
of pleading.

1  
2 I have refreshed my recollection as  
3 to the day it was returned by referring my  
4 attention to a document that appears in  
5 our file which is a carbon copy -- well  
6 actually, the original of the notice to  
7 the Grand Jury in this matter.

8 "26 Marvin Avenue c/o James McDonough.  
9 Rемаiled pleading notice 11/5/73." That is  
10 in Miss Pagoda's handwriting.

11 It is my recollection that I instructed  
12 Miss Pagoda on receipt of this document to  
13 take the entire envelope with its contents  
14 sealed, fold it up like this and place it  
15 in another envelope and the second address  
16 envelope was addressed to Patrick J. McDonough  
17 c/o/ James McDonough, the brother, at 26 Marvin  
18 Avenue, Hicksville, New York and I assume she  
19 followed my instructions and that is how Mr.  
20 McDonough came to be in possession o f the  
21 original mis-addressed envelope and the  
22 second envelope addressed to his brother.

23 MS. BAMBERGER: I would like to  
24 indicate that the agent's report indicated  
25 that 26 Marvin Avenue was an address of the



1  
2 defendant and it was within the knowledge  
3 of the Government when the first notice was  
4 sent out.

5 THE COURT: I heard that but there  
6 was a little bit of ambiguity, it seems to  
7 me.

8 I am trying to ask you how the woman  
9 who mailed the notice came to get the New-  
10 bridge rather than the Marvin Avenue address?

11 MR. LEVIN-EPSTEIN: When a defendant  
12 is processed prior to arraignment, one of  
13 the things an assistant in our office will  
14 do is to prepare a pedigree sheet or as it is  
15 commonly known, a dope sheet consisting of  
16 name, address, age, occupation and citizenship.

17 There is a dope sheet in the file for  
18 Mr. McDonough with an address of 121 Newbridge  
19 Road, Hicksville, Long Island, the address he  
20 gave when questioned as to this. It was put  
21 on the dope sheet and I instructed Miss Pagoda  
22 to send out the notice of pleading to the  
23 defendant at the address given by him, 121  
24 Newbridge Road and I can say that this  
25 information sheet was processed by magistrate

1  
2 Cotoggio on the 14th day of May.

3 It is my recollection that this was  
4 processed by Magistrate Cotoggio on the 14th  
5 day of May in fact, signed by the complainant,  
6 Guy P. Caputo, with a notation that he was  
7 released on one thousand dollars personal  
8 recognizance and the date adjourned to June  
9 8, 1973.

10 THE COURT: Are you saying that the  
11 information sheet processed by the magistrate  
12 on May 14 was from the magistrate and you  
13 call that the dope sheet and you get a copy  
14 of that?

15 MR. LEVIN-EPSTEIN: Yes.

16 THE COURT: And that gave the Newbridge  
17 address?

18 MR. LEVIN-EPSTEIN: Yes and the infor-  
19 mation gained from the defendant -- the agent's  
20 information -- I instructed my secretary to  
21 send this out to the defendant at the Newbridge  
22 Road address.

23 MS. BAMBERGER: The euphemistically  
24 called "dope sheet" is undated.

25 MR. LEVIN-EPSTEIN: There appears to



1  
2  
3 be a typographical error in that there  
4 appears to be part of a date -- a vertical  
5 line followed by "th", day of May, 1973.

6 Refreshing my recollection with the  
7 date on the jacket and the arraignment filed  
8 in the file dated May 14, 1973, I have refreshed  
9 my recollection and I have to admit with all  
10 candor that the dope sheet reflects the same  
11 day. If not, it indicates that the dope sheet  
12 was prepared on Mr. McDonough approximately  
13 two weeks before his arrest.

14 THE COURT: Which wouldn't be likely.

15 MR. LEVIN-EPSTEIN: No.

16 THE COURT: Is there anything you  
17 wish to present?

18 MS. BAMBERGER: Yes. If I may ask  
19 for a brief period of time.

20 THE COURT: Yes.

21 MR. LEVIN-EPSTEIN: I take it the  
22 Court does not think it necessary for me  
23 to take the oath?

24 THE COURT: No.

25 MR. LEVIN-EPSTEIN: My final remark  
to the Court before I rest is that I believe

1  
2 the record is clear based on the testimony of  
3 Agent Caputo and what testimony I would be  
4 giving were the Court disposed to hear sworn  
5 testimony from me, would be that there is at  
6 least a five day excludable period under Rule  
7 5.

8 THE COURT: That is your argument.  
9 Save it.

10 MS. BAMBERGER: We have no further  
11 evidence to present except that I would like  
12 to introduce as defendant's exhibits -- and  
13 I can introduce them through the testimony  
14 of Mr. McDonough if that is necessary --

15 MR. LEVIN-EPSTEIN: No. I will  
16 stipulate to them.

17 MS. BAMBERGER: The two envelopes.

18 THE COURT: All right. Mark them  
19 defendant's exhibits A and B.

20 THE CLERK: Yes.

21 MS. BAMBERGER: I would like to note  
22 that the second envelope has no post mark --  
23 the one with only the Marvin Avenue address.

24 MR. LEVIN-EPSTEIN: The document  
25 speaks for itself.



1  
2 THE CLERK: Are these in evidence?

3 MR. LEVIN-EPSTEIN: Yes.

4 THE CLERK: All right.

5 Defendant's exhibits A and B now  
6 marked in evidence.

7 (So marked)

8 MS. BAMBERGER: Thank you, your  
9 Honor.

10 THE COURT: Are you desirous --  
11 let me say has your attention been called  
12 to the Calot case?

13 MS. BAMBERGER: Yes. I happened to  
14 prepare it and try it in the court.

15 THE COURT: So you are aware that  
16 the situation in that case came within the  
17 meaning of exceptional circumstances. Namely,  
18 a period during which Valot was apparently  
19 doing things that the arresting agents con-  
20 sidered to be a form of cooperation even  
21 though it didn't produce anything.

22 MS. BAMBERGER: Yes your Honor.

23 THE COURT: Now, the Court there, and  
24 I am quoting page 25 of 481 Fd. 2d: "We  
25 hold that the situation presented by the facts

1  
2 in this case comes within the meaning of  
3 exceptional circumstances as that phrase  
4 is used in 5(h)" which I understand is  
5 the Government's position here. First, that  
6 there was a period of time during which it  
7 appeared to the agents and was accepted by  
8 the United States Attorney -- a period cer-  
9 tainly could be said -- on the basis of the  
10 documents in the file -- could run from May  
11 14 to June 8.

12 MS. BAMBERGER: If I may take exception  
13 to your Honor's statement.

14 THE COURT: You believe there is no  
15 terminal date shown.

16 MS. BAMBERGER: Yes. The only piece  
17 of evidence showing a terminal date is Agent  
18 Caputo's recollection through his testimony  
19 that it ended some time during the first  
20 week of June.

21 THE COURT: Isn't there corroborative  
22 evidence in the file -- perhaps I misunderstood  
23 -- but I thought June 8 -- that the period of  
24 time when he was released for cooperation was  
25 to be a period which was to terminate on June



1  
2 8 with his reappearance in court for a pre-  
3 liminary hearing.

4 MS. BAMBERGER: I had no impression  
5 that was the situation. In fact it is my  
6 understanding that the adjourned date of the  
7 hearing was set at the time of the original  
8 hearing so there would be no way of knowing  
9 at that point when the cooperation would end  
10 or if it would end or how long it would go on.

11 THE COURT: Well, I thought Mr. Stechel's  
12 testimony was to the effect that he was released  
13 on his own recognizance on May 14 with the idea  
14 that he was going to be cooperating with a  
15 Secret Service agent in attempting to do something  
16 about tracing the source of the counterfeit bills  
17 and that as part of that a further hearing was  
18 set over; that is it was adjourned until June  
19 8 and it would seem to me that that period of  
20 time, at the very least, from May 14 to June 8,  
21 would have been the anticipated period of cooper-  
22 ation which may have been extended but apparently,  
23 there is nothing extending it beyond that other  
24 than Mr. Stechel's testimony that on September  
25 18 he thought in his status memo that the

1  
2 United States Attorney's criminal division  
3 should check up on the status of this  
4 cooperation. I am not extending it that far  
5 but I am saying at the very least, I am sure  
6 there must have been an appearance by Mr.  
7 McDonough on June 8 at which time he arrived  
8 at a preliminary hearing.

9 MS. BAMBERGER: That could have been  
10 done without his presence. But it doesn't  
11 seem to me there is any connection between  
12 the agreement as testified to by Agent Caputo  
13 and Mr. Stechel that on May 14 he would testify --  
14 I am sorry -- that he would cooperate and  
15 that they agreed to release him on a personal  
16 bond of a thousand dollars to enable him to  
17 cooperate and the June 8, 1973 date for the  
18 hearing. There seems to be no basis in the  
19 record for connecting the two. In fact, Mr.  
20 McDonough was never incarcerated and no attempt  
21 to increase the bond was made so it doesn't  
22 seem to connect.

23 MR. LEVIN-EPSTEIN: I don't believe  
24 Agent Caputo's testimony taken in connection  
25 with Mr. Stechel's testimony shows a nexus as to an



1  
2 agreed upon term of cooperation as it were.

3 THE COURT: No. I am simply saying  
4 that coupling Agent Caputo's testimony with  
5 a period of time I thought ended approximately  
6 the first week in June -- I assume about the  
7 June 8 date when a hearing was waived -- that  
8 during that preliminary period cooperation was  
9 going on and the Government wasn't pushing the  
10 case simply because it was going on.

11 MS. BAMBERGER: The point I wish to  
12 make is that the only piece of evidence which  
13 goes in any way to establish that fact is  
14 Agent Caputo's testimony.

15 There was no other evidence in the  
16 record to establish the length of cooperation  
17 period and my position was that I think Agent  
18 Caputo's testimony with respect to the termi-  
19 nation date of the cooperation period should  
20 be rejected because while everything else --  
21 because while the commencement of the coopera-  
22 tion is reflected in many places, the termina-  
23 tion is reflected nowhere -- not even by Agent  
24 Caputo and it seems to me in light of the fact  
25 there is no supporting evidence for this fact,

1  
2 while there is for the other facts, would  
3 indicate that perhaps, it didn't happen  
4 that way.

5 MR. LEVIN-EPSTEIN: May I ask the  
6 Court to consider this: If -- and I don't  
7 mean to deman counsel's argument -- but if  
8 what counsel says is taken to the logical  
9 conclusion, we can only assume that Agent  
10 Caputo lied on the stand and the cooperation  
11 never occurred and if Agent Caputo was intent  
12 on deceiving the Court as to a status of  
13 cooperation, why, of all possible ways to  
14 do it, would he say "I think it happened  
15 about the first week of June." when he could  
16 have said the man was cooperating right up until  
17 the time the man was indicted?

18 He is not saying that. His recollection,  
19 as clear as it can be a year and a half later,  
20 is that the man cooperated for approximately  
21 three weeks.

22 I believe when your Honor asked if it  
23 was about the first week in June that the  
24 cooperation ended, I believe he said, "I am  
25 not sure but I believe it lasted for three weeks."



1  
2 He could have said that though he  
3 had no evidence of it he recollected that  
4 it went on for four, five or six months.  
5 He didn't say that, Judge.

6 THE COURT: There was another area  
7 I was going to ask about and that was when  
8 counsel was appointed or retained in this  
9 case. Is there any indication of that?

10 MS. BAMBERGER: There is an indication  
11 in the Legal Aid Society file that counsel  
12 was appointed on the afternoon or at some  
13 time after the arraignment before the magistrate.

14 THE COURT: On May 14?

15 MS. BAMBERGER: Yes.

16 THE COURT: In the afternoon?

17 MS. BAMBERGER: Yes.

18 But, as we tried to indicate previously,  
19 that this contact, whatever it was, between  
20 Agent Caputo and the defendant was unlawful  
21 once counsel was assigned.

22 THE COURT: I have reflected on that  
23 and I don't see that it has any bearing on  
24 the issue here.

25 In other words, what you are referring

1  
2 to is basically the so-called Messiah Rule  
3 and the sanction for that would be the  
4 elimination from any trial of any information  
5 of an incriminating nature acquired by the law  
6 enforcement people from the defendant as a  
7 result of these improper contacts with him  
8 but there is nothing of that nature here.

9 He supplied no information and as  
10 far as I am aware, no one ever suggested at  
11 the time of trial, that anything had to be  
12 suppressed because of that.

13 Moreover, it could be argued here that  
14 the issue being explored is not one of guilt,  
15 but public interest underlying the six month  
16 Rule to determine whether or not there was an  
17 excludable period of time during which and  
18 indictment is either valid or invalid at  
19 the time of trial and I would think that any  
20 evidence bearing on that score would be  
21 acceptable on that issue since the guilt of  
22 the defendant is not an issue but only the  
23 validity of the indictment.

24 I was asking when counsel came in as  
25 to whether there was a period of time when he



1  
2 was unrepresented but I take it he was actually  
3 represented from May 14.

4 MR. LEVIN-EPSTEIN: Apparently. The  
5 Legal Aid Society folder reflects he was  
6 appointed counsel on the actual date of arraign-  
7 ment.

8 THE COURT: I suppose the burden is  
9 on the Government to establish this but I have  
10 heard nothing to controvert the agent's testi-  
11 mony that it was a three week period so I can  
12 only reject that testimony if I have reason to  
13 disbelieve it and I can't say that I see any  
14 reason to disbelieve it.

15 In fact, I am strongly of the view that  
16 there are corroborating circumstances and that  
17 it lasted at least from the time of his arrest  
18 to the time of the waiver of hearing on June the  
19 8th and I am also of the opinion that there was  
20 an additional period of excludable time by  
21 virtue of this difference in address.

22 The man obviously had two different  
23 addresses and there was certainly understandable  
24 confusion, particularly when it now appears --  
25 I am sure there would be no question about it

1 and the Court can safely accept the --  
2 that the information sheet taken at the  
3 time of his first appearance before the  
4 magistrate stated that the address was the  
5 Newbridge Road address and surely, the United  
6 States Attorney is permitted to rely on the  
7 magistrate's address as given by the defendant.  
8

9 That the agent's report indicates that  
10 he sometimes resided at another address be-  
11 lieved to be the address of his brother and --  
12 married brother and wife -- does not overrule  
13 the propriety of the circumstances that the  
14 defendant gave an address as his own.  
15

16 So, I am of the view that the Government  
17 satisfied the Court that there was an excludable  
18 period of time from May 14 to June 8 and an  
19 additional five days due to the Government's  
20 inability to bring about the arrest of the  
21 defendant which I can't attribute but to the  
22 fault of the Government.

23 MS. BAMBERGER: Your Honor, I believe  
24 that the Second Circuit reversed and remanded  
25 the judgment of conviction and it is merely  
a technicality, but I think your Honor --



1  
2 we ran into this problem with the Second  
3 Circuit --

4 THE COURT: I welcome your suggestion  
5 because it is a new one to me.

6 MS. BAMBERGER: If the Government and  
7 your Honor will agree I will prepare a new  
8 form of judgment.

9 THE COURT: Let me call your attention  
10 to the language of the opinion.

11 It does say, "That the judgment is  
12 reversed and the action is remanded to the  
13 District Court for further proceedings in  
14 accordance with the opinion of the Court" and  
15 the opinion, in substance, is for a determina-  
16 tion as to whether any Rule 5 exclusions under  
17 the plan apply and I find, as a result of the  
18 hearing, that there are two periods of exclu-  
19 sions applying to this indictment; namely,  
20 a period of three weeks from May 14 to June  
21 8 under Rule 5(h) of this District plan and  
22 a further period of five days from November  
23 9 to November 14, the date of his actual  
24 arraignment under Rule 5(d) of the plan.

25 So, I have made the determination

1  
2 therefore, that there would be roughly a  
3 period of some 26 days if one includes Satur-  
4 days and Sundays in three weeks of exclusions  
5 by reason of the evidence I have heard and  
6 seen.

7 So now I suppose however, that a new  
8 judgment of some kind --

9 MR. LEVIN-EPSTEIN: Perhaps your Honor  
10 the best way to --

11 THE COURT: Assume a new judgment of  
12 some kind has to be entered since the mandate  
13 of the Court does recite that the judgment is  
14 reversed.

15 MS. BAMBERGER: The form that we used  
16 in U.S. v. Flores --

17 THE COURT: Is there something you  
18 did in that case?

19 MS. BAMBERGER: Yes.

20 It indicated that the defendant was  
21 found guilty and that his sentence was imposed  
22 nunc pro tunc to the day of the original judg-  
23 ment and I can submit to Mr. Levin-Epstein a  
24 copy of that and if agreeable to that, we can  
25 submit it to your Honor.



1  
2  
3 MR. LEVIN-EPSTEIN: I would like  
4 that, your Honor. I would like to confer  
5 with Mr. Bergman of our appeals section.  
6  
7  
8  
9

\* \* \* \*

### AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK } ss  
LYDIA FERNANDEZ

being duly sworn,  
deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 24th day of March 19 75 he served two copies of the within

#### GOVERNMENT'S APPENDIX

by placing the same in a properly postpaid franked envelope addressed to:

William J. Gallagher, Esq.

The Legal Aid Society

Federal Defender Services Unit

509 United States Court House

Foley Square, New York, N. Y. 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

*Lydia Fernandez*  
LYDIA FERNANDEZ

Sworn to before me this

24th day of March 19 75

*Martha Schaff*

MARTHA SCHAFF  
Notary Public, State of New York  
No. 24,240,000

Qualified in Kings County  
Comm. on Expiry March 30, 1975

I N D E X

WITNESS	Direct	Cross	Redirect	Recross
CAPUTO	21	34	35	36,45
STECHEL	49	52		

E X H I B I T S

GOVERNMENT	Description	Id.	Evidence
#1	document	31	33

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DEFENDANT'S

A	envelope	67
B	envelope	67